

Kathryn N. Nester (#13967 - UT)
Federal Defenders of San Diego, Inc.
225 Broadway, Ste. 900
San Diego, CA 92101
Telephone: (619) 234-8467

Robert Hunt (#5722)
Daphne Oberg (#11161)
Jessica Stengel (#8915)
Office of the Federal Public Defender
46 W. Broadway, Ste. 110
Salt Lake City, Utah 8106
Telephone: (801) 524-4010

Attorneys for Claud R. Koerber

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

CLAUD R. KOERBER,

Defendant.

**Defendant's Motion to Continue
Evidentiary Hearing**

Case No. 2:17-CR-37

District Judge Frederic Block

Magistrate Judge Paul M. Warner

On May 31, 2019, this Honorable Court entered an Order of Detention following an evidentiary hearing. At the conclusion of the hearing, the Court graciously offered to assist counsel in communicating with the Defendant and recognized that the unexpected incarceration of the Defendant would place a significant burden on counsel in preparing for the upcoming evidentiary hearing

scheduled for June 17th and 18th. After counsel tried to communicate with the Defendant through the regular telephone protocols at Weber County jail and were unsuccessful, counsel approached the Court and sought an order setting forth scheduled legal calls.

On June 5, 2019, this Court entered an Order Facilitating Attorney-Client Communication directing the Jail officials to allow legal calls between Mr. Koerber and his defense team from 2:00 – 4:00 MDT on Thursday, Friday, Saturday and Sunday. The order was provided to jail officials and they agreed to allow Mr. Koerber access to a phone during those times.

On Thursday, the facility was on lockdown all day with all prisoners confined to their cells; however, the jail officials allowed Mr. Koerber to access the pay phone in his pod and the call was able to be completed as ordered by this Court. The call would automatically disconnect after every ten minutes, requiring a new call to be made, but Mr. Koerber was allowed his full two hours.

Following Mr. Koerber's special treatment by the guards, he began to suffer harassment and threats from other prisoners relating to his lengthy use of the telephone.

On Friday, Mr. Koerber was in a crowded area in the middle of his pod during the time of his scheduled call. He attempted to contact legal counsel, but legal counsel was unable to get the telephone to accept the call due to technical difficulties. After trying twice, Mr. Koerber was in fear of other prisoners and did not attempt further calls.

On Saturday, Mr. Koerber was able to make the call and legal counsel was able to accept the call. After approximately 45 minutes into the call, Mr. Koerber was required to hang up because the guards were passing out commissary and all the prisoners were called into the main area where the telephone was located.

Counsel received no calls on Sunday or Monday, and the earliest face-to-face appointment the jail can make available for the attorneys in Salt Lake City is Wednesday.

It is clear that scheduled calls cannot be relied upon due to the day-to-day duties and operations of the guards at the jail facility and the risks to the client's safety if he is perceived as depriving other prisoners of their ability to speak to their families. Defense counsel will be scheduling physical visits from now on and will relay information to the defendant that way.

Defense counsel beseech the Court for a short delay in the scheduled evidentiary hearing in order to account for the complications in communicating with the client. Mr. Koerber has played a vital role in his own defense and the inability to communicate with him has significantly impacted the speed in which defense counsel can prepare for the scheduled hearing and the requested briefing.

If counsel could be allowed a week and a half extension to file the "roadmap" requested by the Court, making it due on or before June 19th, and then a short delay of the evidentiary hearing to either the week of July 1st or the week of July 8th, then counsel will have sufficient time to communicate with Mr. Koerber and prepare for the briefing and the hearing.

This delay will also allow the Government a little extra time to file any necessary response to the roadmap prior to the hearing before the Court. This request is made in good faith and not for the sole purpose of delay.

Respectfully submitted on this the 10th day of June, 2019.

/s/ Kathryn N. Nester